DOCKET FILE COPY ORIGINAL

EX PARTE OR LATE FILED

ORIGINAL

August 23, 1996

RECEIVED

AUG 23 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

EX PARTE

Mr. William Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: Ex Parte Presentation -- WT Docket No 95-157

Microwave Relocation

NextWave Telecom Inc.

Dear Mr. Caton:

On behalf of NextWave Telecom Inc., Ms. Jennifer Walsh and undersigned counsel met today with David Furth, Sandra Danner, Michael Hamra and Jennifer Warren of the Wireless Telecommunications Bureau. NextWave expressed its views on issues in the above-mentioned proceeding. These views are summarized in the attached.

In accordance with Section 1.1206 of the Commission's Rules, an original and two copies of this filing are being submitted to you today.

Sincerely,

Michael R. Wack
NextWave Telecom Inc.

Attachment
cc: David Furth
Sandra Danner
Michael Hamra
Jennifer Warren

9455 Towne Centre Drive
San Diego, California 92121-1964
Tel. 619.597.4040
Fax. 619.597.4041
www.nextwavetel.com

No. of Copies rec'd 0+2
List ABCDE

RECEIVED

AUG 23 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

NEXTWAVE TELECOM, INC.
EX PARTE PRESENTATION
WT DOCKET NO. 95-157
AUGUST 23, 1996

THE MICROWAVE RELOCATION RULES ARE STACKED AGAINST C/D/E/F BLOCK COMPANIES IN CRITICAL RESPECTS. THE COMMISSION MUST ELIMINATE DISPARITIES IN THE RULES THAT UNFAIRLY HARM C/D/E/F BLOCK COMPANIES.

PCS LICENSEES MUST BE PUT ON EQUAL REGULATORY FOOTING IN NEGOTIATIONS WITH INCUMBENTS

- The Commission's microwave relocation rules attempt to facilitate the deployment of PCS service to the public by establishing a framework for relocation negotiations in which PCS companies' bargaining power vis-a-vis microwave incumbents is gradually strengthened over a period of years (i.e., voluntary & mandatory negotiations; involuntary relocation). Unfortunately, that period is not initiated on the same date for all PCS companies. Instead, separate periods are initiated each time a group of broadband PCS licenses is auctioned, so companies that participate in early auctions get stronger *faster* than those who participate in later ones. This link between relocation bargaining power and Commission's auction schedule is having a profoundly negative effect on the PCS rollout process because it tends to "lock-in" the headstart competitive advantage that certain companies have obtained solely due to the regulatory decision to auction their licenses sooner than others. In negotiations with incumbents, such companies *always* have a substantial, structural negotiating advantage that a later-auctioned PCS entrant is powerless to overcome. The Commission's cost sharing plan does not offset this advantage. In fact, later-auctioned entrants are *both* hobbled by a structural negotiating disadvantage *and* subject to cost-sharing requirements.

- The Commission can and should correct this problem by making April 1995 the initiating date of the voluntary negotiations period for *all* broadband PCS companies, not just for companies that participated in the first broadband PCS auction. Adopting this modification will not disadvantage any party because it will not change the relative bargaining positions of incumbents and C/D/E/F licensees, since the Commission has not yet granted any C/D/E/F block licenses. At the very least, the Commission should shorten the voluntary negotiations period for C/D/E/F block companies to one year. The Commission should *not* establish a one year voluntary period for D/E/F companies while leaving the C Block voluntary period at two years, as this would produce the anomalous (and wholly unjustified) result of placing C Block companies at a significant disadvantage in the microwave relocation process relative to all other PCS licensees.

NEXTWAVE TELECOM, INC.
EX PARTE PRESENTATION
WT DOCKET NO. 95-157
AUGUST 23, 1996

C/D/E/F BLOCK COMPANIES MUST BE GRANTED ACCESS TO INFORMATION ABOUT RELOCATION AGREEMENTS THAT EFFECTS THE DEPLOYMENT OF THEIR NETWORKS

- The Commission's rules require a PCS entrant to relocate microwave licensees whenever its operations would cause interference to an incumbent's system. The rules also are intended to create an incentive for PCS entrants to relocate whole microwave systems (including links outside a PCS entrant's band) by enabling a relocator to share the costs of relocation with other PCS companies that benefit from the relocation. Unfortunately, there is a significant ambiguity in the rules that is a source of potential abuse and must be clarified immediately. As presently written, the rules inherently imply -- but do not expressly require -- that a PCS relocator must inform other PCS entrants of its relocation agreements, even when such agreements clearly affect incumbent operations in those other PCS entrants' bands. Of course, if such information can be withheld, the negotiations process for those other PCS entrants will be distorted substantially. Particularly during the voluntary negotiations period, when incumbents are not required to negotiate in good faith, those entrants would have no means of identifying who they need to negotiate with, much less the reasonable parameters of such negotiations. Instead, they will be forced to expend valuable time and funds pursuing negotiations with everyone, even incumbents that already have agreed to relocate. This irrational state of affairs could extend indefinitely if relocation agreements are allowed to contain overly restrictive nondisclosure provisions.

- In order to avert this needless and wasteful expense, and to keep the relocation negotiations process from becoming a shell game, the Commission must explicitly require information about relocation agreements to be made available to any affected PCS company upon reasonable request. One way to accomplish this is to clarify that section 24.245 of the Commission's rules:

  - requires all PCS relocators to submit documentation of each relocation agreement to both Commission-selected cost-sharing clearinghouses within ten days of the signing of such agreement -- regardless of the relocators' plans to pursue cost-sharing at a later time;

  - authorizes other affected PCS licensees to access such information, subject to appropriate rules concerning its confidential treatment; and

  - bans provisions in relocation contracts that would restrict the availability of such information to affected PCS licensees.

NEXTWAVE TELECOM, INC.
EX PARTE PRESENTATION
WT DOCKET NO. 95-157
AUGUST 23, 1996

MICROWAVE INCUMBENTS SHOULD NOT BE PERMITTED TO PARTICIPATE IN COST-SHARING

Allowing incumbents to participate in the microwave relocation cost sharing program would fundamentally alter that program in ways that it and related Commission rules are not designed to accommodate. Under existing rules, the decision whether to relocate an incumbent, and the burden of paying for such relocation, rest squarely and solely in the hands of PCS licensees. This is entirely appropriate because they are the only entities who know how their networks will be deployed and, thus, whether and to what extent their network operations will interfere with incumbent microwave licensees. Forging a link between relocation decisions and associated financing responsibilities in this manner creates strong incentives for PCS companies to act in technologically innovative and fiscally prudent manners concerning relocation. By contrast, breaking that link by letting microwave incumbents "self-select" themselves for relocation eliminates these incentives. That is unwise as a matter of general policy. It also would be unfair to the particular PCS licenses that would be forced to bear the cost of relocations they never asked for and very well may have been able to avert entirely by engineering their system around an incumbent. The Commission should continue to limit participation in the cost sharing program to PCS licensees.